United Nations A/HRC/25/59/Add.1

General Assembly

Distr.: General
4 February 2014

Original: English

Human Rights Council
Twenty-fifth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson

Addendum

Mission to Burkina Faso*

Summary

At the invitation of the Government, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism conducted a visit to Burkina Faso from 8 to 12 April 2013. He wishes to thank the Government for the invitation and the excellent cooperation extended to him.

Burkina Faso has not been affected by terrorist acts to date. The Government is committed to the global measures being taken to counter terrorism and remains vigilant in that regard. In his report, the Special Rapporteur seeks to highlight central issues for the promotion and protection of human rights while countering terrorism, and points to particular areas of interest or concern in his conclusions and recommendations.

The Special Rapporteur refers to the country's involvement in international efforts to counter terrorism and applauds its efforts to prevent terrorism. Burkina Faso recognizes the international nature of measures to counter terrorism, and therefore actively supports regional and subregional efforts in that regard. The Special Rapporteur encourages Burkina Faso to support such cooperation and, in particular, to ensure that the promotion and protection of human rights is mainstreamed into all efforts to counter terrorism.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and in French only.

GE.14-10759

1410759

Please recycle

Annex

[English and French only]

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, on his mission to Burkina Faso

Contents

		Paragraphs	*Page*
I.	Introduction	1–5	3
II.	Context of the visit	6–19	3
	A. General political background	6–9	3
	B. Legal background	10–19	5
III.	Conditions conducive to counter-terrorism: challenges faced by Burkina Faso	20–62	7
	A. External threats	22–30	8
	B. Internal threats	31–50	9
	C. Government action	51–62	14
IV.	Conclusions and recommendations	63–77	16
	A. Conclusions	63–69	16
	B. Recommendations	70–77	17

I. Introduction

1. Pursuant to Human Rights Council resolutions 15/15, 19/19 and 22/8, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism conducted an official visit to Burkina Faso from 8 to 12 April 2013 at the invitation of the Government. The present report is submitted pursuant to those resolutions, which request the Special Rapporteur to report regularly to the Council.

2. The purpose of the visit was to gather information about the current situation in Burkina Faso with regard to the protection and promotion of human rights while countering terrorism, in particular, conditions conducive to the spread of terrorism (pillar I of the United Nations Global Counter-Terrorism Strategy) and to assist the Government in its efforts to counter terrorism while respecting human rights.

3. During the course of his visit, the Special Rapporteur had meetings with the Prime Minister, the Minister of Human Rights and the Promotion of Civic Responsibility, the Minister for Territorial Administration and Security, the Minister for Relations with Institutions and Political Reforms, and the Minister of Justice. He also met with the Procurator-General, the President of the National Financial Information Processing Unit, the High Authority for the Control of Arms Imports and their Use, and high-level representatives of the National Commission to Combat the Proliferation of Small Arms. During a visit to the National Assembly, the Special Rapporteur met with the President and Vice-President of the Foreign Affairs and Defence Committee and the President of the Committee on General, Institutional and Human Rights Affairs. He also met with the Vice-President and Rapporteur of the National Human Rights Committee. The Special Rapporteur also met with lawyers, judges, non-governmental organizations and representatives of the international community, including the Ambassador of the United States of America, the Ambassador of France, and the Ambassador and Head of the European Union Delegation to Burkina Faso. The Special Rapporteur also consulted with relevant United Nations agencies operating in Burkina Faso, including those involved with the influx of refugees from the conflict in Mali.

4. In addition, the Special Rapporteur conducted a visit to the military prison (Maison d'Arrêt et de Correction des Armées) which houses members of the Armed Forces and the gendarmerie detained on remand or convicted of military offences, where he was able to conduct confidential interviews with detainees. He also visited the main prison in Ouagadougou (Maison d'Arrêt et de Correction de Ouagadougou).

5. The Special Rapporteur thanks the Government for the invitation and the excellent cooperation extended to him throughout the visit. The Special Rapporteur also expresses his appreciation to the United Nations Resident Coordinator and his team in Burkina Faso for their diligent support in preparation for and during the visit.

II. Context of the visit

A. General political background

6. Burkina Faso is a landlocked country situated in Central West Africa. The population of just over 17 million people is growing at a rate of 3 per cent per annum. The country does not have extensive natural resources or a strong industrial base. A large part of the population is engaged in subsistence agriculture and the main cash crop is cotton. Since 2004, restrictions on inward investment have been very significantly relaxed, which

has resulted in an increase in gold mining and prospecting, which is now the country's main source of export revenue.

7. Burkina Faso borders a number of States that have been affected by conflict in recent years, including Côte d'Ivoire, Mali and Niger; some of the conflicts are ongoing. In 2012, the gross domestic product (GDP) of Burkina Faso was estimated to be approximately $24.69 billion.[1] According to the United Nations Development Programme, approximately 45 per cent of the population lives below the poverty line set by the World Bank.[2] The highest rate of unemployment is among the 18–25-year age group. Approximately 60 per cent of the population is Muslim, with the remainder made up of Catholics (19 per cent), Animists (15.3 per cent), and Protestants (4.2 per cent).[3] The population includes more than 60 different ethnic groups and over 120 different languages are spoken. The official language is French.

8. Despite the apparent geographical vulnerability of Burkina Faso, to date it has not suffered from serious internal armed conflict or acts of terrorism. All those who spoke to the Special Rapporteur ascribed that to the country's long history of promoting interfaith tolerance and dialogue, a tradition which is described as a part of the national consciousness. The rate of interfaith and inter-ethnic marriage is high, and it is common for children of one faith to be educated in schools run by religious organizations other than their own. The people of Burkina Faso attach considerable importance to the principle of respect for alternative faiths and cultures. That is reflected in government policy at the highest level. In April 2011, for example, the Ministry for Human Rights launched its national strategy to promote a culture of tolerance and peace in Burkina Faso. The Special Rapporteur was informed that, on 13 March 2013, the Council of Ministers adopted the national policy (2013–2022) and action plan (2013–2015) on human rights and the promotion of civic responsibility, to which reference had been made in the national report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 (A/HRC/WG.6/16/BFA/1, para. 16).[4] In January 2012, the Ministry published a handbook on the prevention and management of conflicts between farmers and cattle breeders, aimed at resolving long-running disputes concerning land usage in rural areas.

9. Since the early 1990s, the Presidency of Burkina Faso has acted as mediator in regional disputes and armed conflicts between and within States in the region, facilitating peace negotiations in a variety of situations, including conflicts involving the Tuareg people of the subregion. Within the framework of the second universal periodic review of Burkina Faso, Burkina Faso was commended for its role as the chief peace negotiator for many of the conflicts in the region, as indicated in the report of the Working Group on the Universal Periodic Review on Burkina Faso (A/HRC/24/4, para. 42). During his visit, the Special Rapporteur was informed that most recently, during 2012, the President and the Minister for Foreign Affairs played a central role in the mediation efforts of the Economic Community of West African States (ECOWAS) in the conflict in northern Mali, hosting negotiations between the Government and rebel factions in Ouagadougou. Pursuant to information received, during that process the President drew a clear distinction between

[1] United States of America, Central Intelligence Agency (CIA), *The World Factbook 2013–14* (Washington, D.C., 2013). Available from https://www.cia.gov/library/publications/the-world-factbook/geos/uv.html.

[2] United Nations Development Programme, *2013 Human Development Report*. Available from http://hdrstats.undp.org/en/countries/profiles/BFA.html (accessed 11 November 2013).

[3] CIA, *The World Factbook 2013–14* (Washington, DC, 2013).

[4] The national policy (2013–2022) and action plan (2013–2015) are contained in Decree No. 2013-235/PRES/PM/MDHPC/MEF of 8 April 2013.

national rebel forces, such as the Mouvement national pour la libération de l'Azawad, and Islamist insurgents from outside Mali, such as the Movement for Unity and Jihad in West Africa. Following the French military intervention in Mali in January 2013, Burkina Faso provided a contributory contingent of 700 soldiers to the ECOWAS force operating in the country.

B. Legal background

1. Human rights and other international obligations

10. In its preamble, the Constitution of Burkina Faso explicitly endorses the 1948 Universal Declaration of Human Rights and the international instruments on economic, political, social and cultural rights as well as the 1981 African Charter on Human and Peoples' Rights.[5] Burkina Faso has ratified a wide range of international treaties in the human rights field, as indicated in the compilation on Burkina Faso prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 (A/HRC/WG.6/16/BFA/2, p. 2). The political will of the Government to effectively counter terrorism is visible in the number of international counter-terrorism instruments to which Burkina Faso is a party. To date, the Government is a party to 12 of the 16 international counter-terrorism instruments.[6]

11. Burkina Faso is not a party to the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism, the 2005 Amendment to the Convention on the Physical Protection of Nuclear Material, the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, or the 2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.[7]

2. Current national legislative counter-terrorism framework

12. Following the visit and recommendations of the Counter-Terrorism Committee Executive Directorate in 2009 to monitor and promote the implementation of Security Council resolution 1373 (2001),[8] Burkina Faso enacted Act No. 60-2009/AN of 17 December 2009 punishing acts of terrorism in Burkina Faso and Act No. 61-2009/AN of 17 December 2009 on combating the financing of terrorism in Burkina Faso.

---

[5] The text of the Constitution is available at http://presidence.bf/constitution.php?page=2&sid=22 (in French only).

[6] See the United Nations Action to Counter Terrorism website, which lists 16 international legal instruments to counter terrorism. Available from www.un.org/en/terrorism/instruments.shtml.

[7] During the Special Rapporteur's visit, Government officials expressed the view that, although Burkina Faso is a landlocked country, the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the 2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf are important to Burkina Faso. Their reasoning was that the occurrence of a terrorist attack referred to in those instruments could also have negative consequences for a landlocked country like Burkina Faso.

[8] See pages 1 and 2 of the briefing by Mr. Jean-Maurice Ripert, Acting Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, to the Security Council, 26 May 2009. Available from. www.un.org/en/sc/ctc/docs/statements/2009_05_26_ctcchair_brief.pdf.

(a) Act punishing acts of terrorism in Burkina Faso

13. Act No. 60-2009/AN of 17 December 2009 punishing acts of terrorism defines and prohibits acts of terrorism in Burkina Faso. Article 2 provides a list of serious crimes which constitute acts of terrorism and which are subsequently detailed in articles 3–13. Article 2 further specifies that those acts constitute crimes when they are intended to intimidate or terrorize the general population or compel a State or an international organization to do or abstain from doing something.

14. The Special Rapporteur believes that the Act incorporates a definition of terrorism that broadly corresponds to international standards.

15. While the existing international legal framework does not provide for a comprehensive definition of the concept of terrorism, the former Special Rapporteur, in the report on his 2008 mission to Spain (A/HRC/10/3/Add.2), expressed the view that the cumulative characterization of a terrorist crime, as elaborated by the Security Council in its resolution 1566 (2004), represents an effort to confine counter-terrorism measures to offences of a genuinely terrorist nature. In his view, any offence defined in domestic law as a terrorist crime should meet the following three conditions: (a) committed against members of the general population, or segments of it, with the intention of causing death or serious bodily injury, or the taking of hostages; (b) committed for the purpose of provoking a state of terror, intimidating a population, or compelling a Government or international organization to do or abstain from doing any act; and (c) corresponding to all elements of a serious crime as defined by the law. Any law proscribing terrorism must adhere to the principle of legality enshrined in article 15 of the International Covenant on Civil and Political Rights, be applicable to counter-terrorism alone and comply with the principle of non-discrimination (A/HRC/10/3/Add.2, para. 6).[9]

16. During his visit, the Special Rapporteur was informed that no jurisprudence is available regarding the implementation of the Act No. 60-2009/AN of 17 December 2009 punishing acts of terrorism in Burkina Faso.

17. The Special Rapporteur has one concern with regard to article 2. The offence of "criminal conspiracy" in article 2, which derives from French law, has been used in some countries to prosecute individuals with only the most tenuous connection to alleged terrorists. However, according to information received during the Special Rapporteur's visit, no individual has thus far been arrested or charged in Burkina Faso for any offence under the 2009 counter-terrorism legislation. There is therefore no evidence to suggest that that very broad offence has been, or would be, misused by the authorities. Furthermore, the Government of Burkina Faso informed the Special Rapporteur that the provision would be implemented only in strict application of the letter of the law.

18. The Act also lists a range of terrorist offences relating to civil aviation, maritime navigation, fixed platforms and public transport, offences against internationally protected persons, kidnapping, offences connected with the use of dangerous materials (arts. 3–13), and acts concerned with the provision of material support to terrorism, including the provision of arms for the purpose of terrorism, and for recruitment or training of individuals in acts of terrorism (arts. 14 and 15). It provides for a range of penalties up to and including life imprisonment.

[9] See also the report of the former Special Rapporteur on ten areas of best practices in countering terrorism (A/HRC/16/51), paras. 26–28.

(b) Act on combating the financing of terrorism in Burkina Faso

19. Act No. 61-2009/AN of 17 December 2009 on combating the financing of terrorism in Burkina Faso is designed to give effect to the country's obligations under the 1999 International Convention for the Suppression of Terrorist Financing[10] and Security Council resolution 1373 (2001). The Special Rapporteur welcomes with appreciation the enactment of that law.

III. Conditions conducive to counter-terrorism: challenges faced by Burkina Faso

20. The Special Rapporteur stated in his 2011 report to the General Assembly (A/66/310) that the first obligation of any State, and a key component of its raison d'être, is to protect the lives of its citizens and of all individuals within its territory and subject to its jurisdiction (para. 20). Under article 6 of the International Covenant on Civil and Political Rights,[11] the right to life has been characterized as the supreme human right.[12] It is non-derogable within the meaning of article 4, paragraph 2, of the Covenant, as indicated in Human Rights Committee general comment No. 6 (1982) on the right to life (para. 1). Human rights-compliant counter-terrorism measures help to prevent the recruitment of individuals to commit acts of terrorism (A/HRC/16/51, para. 12). In his first report to the Human Rights Council (A/HRC/20/14), the Special Rapporteur stated that human rights abuses have all too often contributed to the grievances which cause people to make the wrong choices and to resort to terrorism. Singling out communities and disproportionately addressing law enforcement measures against them entails the risk of collective alienation. States that have derogated from their human rights obligations on grounds of national emergency, or resorted to military responses in countering terrorism, have witnessed an erosion of institutional, procedural and substantive safeguards. The collective commitment of the international community to protect the rights of potential future victims of terrorism necessarily entails an equally resolute commitment to the principles of international human rights law in the conception and implementation of counter-terrorism strategies (para. 32).

21. The United Nations Global Counter-Terrorism Strategy was adopted by Member States on 8 September 2006 and was most recently reaffirmed in June 2012 in General Assembly resolution 66/282, itself reaffirming General Assembly resolutions 60/288, 62/272 and 64/297. It is a global instrument to enhance national, regional and international efforts to counter terrorism, within which all Member States have agreed to a common strategic approach to fighting terrorism. The strategy is not limited to sending the clear message that terrorism is unacceptable in all its forms and manifestations; it also aims to ensure that States take practical steps individually and collectively to prevent and combat it. The steps include a wide array of measures ranging from strengthening State capacity to counter terrorist threats to better coordinating the counter-terrorism activities of the United Nations system.[13]

---

[10] Burkina Faso became a State party to the Convention by accession on 1 October 2003.

[11] See also the European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2; the African Charter on Human and Peoples' Rights, art. 4; the American Convention on Human Rights, art. 4; and the Arab Charter on Human Rights, art. 5.

[12] Manfred Nowak, *United Nations Covenant on Civil and Political Rights, CCPR Commentary*, 2nd rev. ed. (Kehl am Rhein: Engel, 2005), p. 121.

[13] Information on the United Nations Global Counter-Terrorism Strategy is available from www.un.org/en/sc/ctc/action.html.

A. External threats

22. Government sources provided the Special Rapporteur with a seemingly realistic and transparent assessment of the external and internal threats Burkina Faso is facing. As to the former, the country's border security is a matter of considerable concern to the Government. The border with Mali is 1,200 kilometres long and is not marked by any natural or man-made physical boundary. Along approximately half its length, the border is in direct contact with the conflict zone in northern Mali. The border as a whole is highly porous and difficult to secure. The army of Burkina Faso is 10,000 strong, but more than 2,000 troops are currently committed to military operations in other States, including Guinea-Bissau, Mali and Sudan, placing considerable strain on the country's military resources.

23. The Special Rapporteur was informed that, in response to the existence of external threats on its borders, the Government has created a dedicated counter-terrorism force and has stationed 1,000 troops — army and specialist gendarmerie — on parts of the border with Mali. There have so far been a small number of cross-border incidents in the north and there remains an ever-present risk that groups such as the Mouvement national pour la libération de l'Azawad, Al-Qaida in the Islamic Maghreb and the Movement for Unity and Jihad in West Africa may transit across Burkina Faso from Mali and Niger and carry out kidnappings and similar attacks in the Sahel.

24. The Special Rapporteur heard that there have also been a number of sporadic and, thus far, relatively minor border incursions by insurgents from Mali into the territory of Burkina Faso along those sections of the border. There is no evidence that any group has so far established an operational base within the territory of Burkina Faso, but the need for international support to police the border is urgent and imperative. The southerly part of the border with Mali is poorly protected, and is dependent upon intermittent manned border posts, with ground patrols and a limited amount of air support from the Air Force of Burkina Faso.

25. The Special Rapporteur is of the view that, taken as whole, border security represents a considerable vulnerability for the country. The Government has received a certain amount of bilateral support in its efforts to secure the border, but that has been largely confined to capacity-building, training and the supply of a limited amount of equipment. The Government considers that further international assistance is essential to maintain its border security. Government security sources stressed to the Special Rapporteur that in order to guarantee the protection of the population, the army needed additional material and other support, particularly communication, observation and radar equipment as well as additional vehicles.

26. During his meeting with the National Commission to Combat the Proliferation of Small Arms, the Special Rapporteur was informed that poor border security also represented a major obstacle to efforts to suppress arms trafficking. The Commission estimates that there are approximately 2 million unlawful light weapons in circulation within the borders of Burkina Faso, including automatic weapons and light missiles. For a country with a population of just over 17 million, the Special Rapporteur considers that that represents a significant threat to security and is evidence of continuing cross-border arms trafficking. Prior to the conflict in Mali, the Commission estimated that inward trafficking represented a significant problem, with 39 per cent of weapons coming from Ghana, 19 per cent from Côte d'Ivoire and 6 per cent from Mali. A recent initiative to monitor and suppress arms trafficking across the Malian border since the start of the conflict had to be abandoned due to a lack of funds.

27. The Special Rapporteur was informed that the Commission has been working with a number of organizations promoting arms control, including Amnesty International,

to shape the recently adopted Arms Trade Treaty. He welcomes that development. However, senior members of the Commission emphasized that improved border security was essential in order to suppress the proliferation and cross-border smuggling of light weapons that could be used in armed conflict.

28. As a result of the conflict in Mali, Burkina Faso is home to approximately 50,000 refugees.[14] They have fled the fighting and are currently living in three consolidated refugee camps in Goudébou, Mentao and Saag Nioniogo, following relocation from sites close to the northern border as well as areas outside the camps in the provinces of Oudalan and Soum. The Government has taken considerable care to screen new arrivals and separate genuine refugees from non-civilians. The Special Rapporteur was informed that the Office of the United Nations High Commissioner for Refugees has no indication that there are former combatants in refugee camps in Burkina Faso. Nevertheless, the Special Rapporteur was informed that a significant number of former combatants associated with the Mouvement national pour la libération de l'Azawad and other groups involved in the conflict in Mali are among the refugees within its borders, and are organized into identifiable groups. Government officials maintain a close watch on those groups and individuals in order to identify and prevent security risks that may arise from their presence on the territory of Burkina Faso.

29. The Special Rapporteur notes that, while the conflict in Mali has not so far spilt over to the territory of Burkina Faso, there is a risk that it may do so. In the view of the Special Rapporteur, Burkina Faso needs further international support and assistance in order to be able to guarantee the security of the border and the safety of its citizens and others within its territory. While the primary need is for support in connection with border security, some interlocutors suggested that improved intelligence systems training would also be useful. The Special Rapporteur was informed that, at present, it appears that any report of abnormal activity is escalated to ministerial level. Many of the reports turn out to be unfounded, with a consequent diversion of resources. During the Special Rapporteur's visit, it was suggested that international assistance would be useful in introducing the systematization of intelligence evaluation so that only reliable threat reports are escalated to ministerial level. For the Special Rapporteur, that points again to the need for additional international support.

30. The Special Rapporteur was informed that some interlocutors considered the mediating role of the Presidency to pose a threat of reprisals against Burkina Faso from the Movement for Unity and Jihad in West Africa, the Mouvement national pour la libération de l'Azawad or Al-Qaida in the Islamic Maghreb, and noted that at least one group had previously announced an intention to mount a reprisal attack against a number of major cities in different parts of the subregion, including Ouagadougou. However, government sources noted that domestic intelligence and security arrangements in the capital and elsewhere in Burkina Faso have been considerably strengthened since January 2013, and the threat of an externally planned terrorist attack is currently well-contained.

B. Internal threats

31. Pillar I of the United Nations Global Counter-Terrorism Strategy (see para. 2 above) emphasizes the fact that conditions conducive to the spread of terrorism include not only long-running regional conflicts such as that in the Sahel, but also social, political,

[14] See United Nations High Commissioner for Refugees (UNHCR) planning figures for the Mali situation. Available from www.unhcr.org/pages/49e483de6.html.

economic and educational exclusion, shortcomings in good governance, and the persistence of unresolved human rights violations.

1. Poverty and inequality

32. Within Burkina Faso, poverty and perceived inequality are sources of increasing levels of frustration among poorer sections of the population, as evidenced by civil unrest and the army mutiny in 2011. The Special Rapporteur heard from civil society representatives during his visit that there is a perception among disadvantaged sectors of society that the wealth generated by mining has been unfairly distributed, that land disputes have resulted in frustration, and that there are signs of mounting political dissatisfaction and unrest.

33. The Special Rapporteur considers that the underlying problem is poverty. In recent years, GDP has increased at a rate of approximately 5 per cent per annum with the population growth in the region of 3 per cent. During his visit to Burkina Faso, the Special Rapporteur was informed that some people consider that growth of that level ought to have been reflected in at least some reduction in absolute poverty levels, which have in fact remained relatively static. On the other hand, the Prime Minister informed the Special Rapporteur that a recent job creation initiative has allocated CFA francs 10 billion for the creation of 60,000 new jobs. All interlocutors, however, expressed the view that there is evidence of growing frustration and social dissatisfaction, particularly among young people, which have the potential to lead to radicalization and even violent extremism.

34. In his first report to the Human Rights Council, the Special Rapporteur expressed the view that there were at least "patterns of correlation" between poverty and terrorism, suggesting that societies characterized by economic, social, political and educational exclusion were often breeding or recruitment grounds for terrorism. He also referred to the suggestion of the Organisation for Economic Co-operation and Development that efforts at terrorism prevention should focus on grievances arising from inequality and social exclusion (A/HRC/20/14, para. 31). Equally, in its Sahel strategy, the European Union lists poverty, social exclusion and unsatisfied economic needs as factors that create the risk that extremism will develop.[15] The Algiers Plan of Action on the Prevention and Combating of Terrorism in Africa, adopted by the African Union in 2002, also recognizes poverty, deprivation and marginalization as conditions that are conducive to terrorism.[16] In that context, the Special Rapporteur calls upon the Government of Burkina Faso to increase its efforts to effectively combat poverty.

2. Freedom of religion and religious tolerance

35. Violations of human rights, including freedom of religion and infringements of religious tolerance, are recognized as conditions conducive to terrorism (see para. 31 above). The Special Rapporteur was informed of some minor, but unprecedented, incidents that some people have suggested are early warning signs, pointing to the emergence of religious intolerance in some sections of society. Examples given to the Special Rapporteur included threats that were reportedly made to a senior imam following a meeting with a Catholic archbishop in Ouagadougou as part of an ongoing process of interfaith dialogue between religious leaders, and an incident in which a number of

[15] Stratégie pour la sécurité et le développement au Sahel, Résumé, p. 3. Available from http://eeas.europa.eu/delegations/mali/documents/press_corner/20110929_fr.pdf (in French only).

[16] See also "Africa and International Counterterrorism Imperatives: Expert paper prepared by the Office of the Special Adviser on Africa", p. 23. Available from www.un.org/africa/osaa/reports/new-reports/OSAA-TerrorismPaper-12Nov2010.pdf.

Muslim families removed their children from a Christian school in protest at the introduction into the school uniform of a cross as a religious emblem. It appears to the Special Rapporteur that the incidents may have attracted a disproportionate amount of attention in the media and among the political classes in Ouagadougou due to the importance attached in Burkina Faso to the tradition of religious tolerance and interfaith cooperation. Nonetheless, the very fact that they have attracted so much attention is, to the Special Rapporteur, evidence of a degree of social fragility and perceived vulnerability.

36. While incidents such as those have caused unease, and are closely monitored by the Government and civil society, the Special Rapporteur agrees with most interlocutors that they do not amount to proof of any discernable shift in attitudes among any sector of the population towards religious intolerance or radicalization. The attention attached to them is perhaps best seen as evidence of the sensitivity of the population, the Government and the media to signs of intolerance.

37. The value of religious tolerance is enshrined in the Constitution: the State is committed to secularism (art. 31), and freedom of thought and of religion are guaranteed (art. 7).[17] In September 2012, the Ministry for Relations with Parliament and Political Reforms sponsored a forum for dialogue between faith leaders aimed at examining the relationship between religious and State institutions, and promoting tolerance and understanding between them.

38. In the same vein, in its 1997 concluding observations, the Committee on the Elimination of Racial Discrimination commended "the spirit of tolerance in Burkina Faso, the State party's active policy of equality and non-discrimination, and the process of democratization" (CERD/C/304/Add.41, para. 4).

39. The Special Rapporteur notes with appreciation that the Government pursues an active programme of interfaith cooperation, which is also visible in its national strategy to promote a culture of tolerance and peace in Burkina Faso (see para. 8 above), and considers it an element of best practice.

40. The Special Rapporteur was informed that, over the past year, a number of imams and scholars from abroad have entered Burkina Faso for religious purposes and have been preaching at local mosques. Foreign preachers travel around the country and move freely. The Special Rapporteur was informed that the Government monitors the activities of preachers and their preaching in order to fulfil its obligation, under paragraph 1 (b) of Security Council resolution 1624 (2005), to prevent incitement to commit a terrorist act or acts. The Government further informed the Special Rapporteur that it is satisfied that none of the foreign preachers has so far crossed the line from inflammatory rhetoric to incitement to acts of violence. The Burkina Faso authorities stated to the Special Rapporteur that radical sermons are prohibited. The Special Rapporteur commends the efforts of Burkina Faso to counter incitement to acts of violence. He reaffirms the provisions in Security Council resolution 1624 (2005) requiring that measures to implement the resolution must comply with States' obligations under international law, in particular to respect the right to freedom of expression. Nonetheless, he has not heard any concerns in that respect.

41. There was consensus among all the interlocutors the Special Rapporteur met during his visit that the Burkina Faso tradition of interfaith tolerance, dialogue and peacebuilding represented a significant defence against the growth of violent religious extremism, and that there was currently no evidence of a significant trend in that direction. On the other

[17] The text of the Constitution is available, in French only, from http://www.wipo.int/wipolex/en/text.jsp?file_id=181595.

hand, all interlocutors expressed their agreement with the Special Rapporteur that poverty, social and educational exclusion and frustration, combined with the presence of armed groups and ideologues operating in the subregion, mean that there can be no grounds for complacency. The Special Rapporteur noted during his visit that the Government is very much aware of the need to address social concerns and improve local governance, but is severely constrained by the scarcity of economic and other resources.

3. Detention

42. The most visible and persistent human rights violations in Burkina Faso affect those who are deprived of their liberty. Allegations persist of torture and ill-treatment by the gendarmerie during the initial detention stage in prison prior to the first court appearance. The Special Rapporteur did not hear any direct evidence of such incidents during his visit, but noted that the issue would form part of the examination of the country's national report submitted to the universal periodic review by the Human Rights Council subsequent to his visit in April 2013.

43. The Special Rapporteur did, however, see and hear first-hand evidence of the conditions of detention in military and civilian prisons. The total prison population is in the region of 5,660, including approximately 160 military prisoners detained as a result of their alleged involvement in the 2011 army mutiny, which was reportedly motivated by perceived inequalities in pay and conditions, rather than broader political considerations.

44. During his visit to the military prison in Ouagadougou (Maison d'Arrêt et de Correction Militaire de Ouagadougou), the Special Rapporteur was informed that there is a severe shortage of medical support and supplies for sick prisoners. He was also informed that the majority of those detained as a result of the mutiny have been in pretrial detention for more than two years and still do not have a date fixed for their trials. The conditions of detention were extremely basic, but morale among the prisoners appeared to be generally satisfactory and the relationship between prisoners and prison staff appeared polite and friendly. The Special Rapporteur conducted a number of private and confidential interviews with detainees, none of whom reported ill-treatment or made any complaint about their conditions of detention other than the absence of medical treatment and the length of pretrial detention.

45. However, the situation in the civil prison system is radically different and grossly inadequate. The Special Rapporteur visited the main prison in Ouagadougou (Maison d'Arrêt et de Correction de Ouagadougou), inspected the premises, and spoke at considerable length with the senior staff, who were transparent and forthright in expressing their concerns about the conditions in which prisoners were being held. The Special Rapporteur was impressed by the professionalism, care and commitment of the senior staff, including the Regional Director for the Ouagadougou district who is responsible for the supervision of 16 prisons. It appeared clear to the Special Rapporteur that the staff were striving to do their utmost to provide a constructive and healthy environment for the prisoners, and were frustrated by their inability to afford humane conditions of detention.

46. The Special Rapporteur was informed during his visit that the facility currently houses 1,281 prisoners, including adult males and females and juveniles. The Special Rapporteur was further informed that the adult male facilities were currently approximately 250 per cent over capacity, with many inmates sleeping more than six to a cell. The Special Rapporteur found the sanitation to be extremely poor and the fabric of the prison was in an observably poor state of disrepair. During his visit, the Special Rapporteur heard that there was an almost total absence of medication for the treatment of infections or diseases which, in view of the overcrowding and poor sanitation, were commonplace. The medical infirmary was an empty building, without medical staff or equipment, and senior prison staff expressed grave concerns about the health implications

for prisoners. The prison had reportedly only one functioning pickup truck for transporting prisoners to court or hospital, which was on loan from the Ministry of Justice. The authorities depended heavily on Catholic and other religious charities for donations and support to run even the most basic of services. The Special Rapporteur was informed during his visit that the conditions in the Maison d'Arrêt et de Correction de Ouagadougou were typical of most prisons in Burkina Faso.[18] He considers the conditions of detention to amount to inhuman and degrading treatment and stresses the imperative need for urgent action.

47. Pretrial detention is regulated in title III, section 7 of the Code of Criminal Procedure and is intended as a means of preventing detainees from escaping, repeat offending and contacting certain persons pending trial. Article 136 provides that "pretrial detention is an exceptional measure". The length of pretrial detention depends on whether the alleged act was a crime or an offence. In the case of an offence, when the maximum penalty prescribed by law is less than one year's imprisonment, an accused person domiciled in Burkina Faso may not be detained for more than five days after his or her first appearance before the investigating judge if he or she has not previously been convicted of a crime or sentenced to more than three months' imprisonment without probation for an ordinary offence. In other cases, pretrial detention may not exceed six months. If continued detention appears necessary at the end of that period, the investigating judge may extend it by a special substantiated court order, based on reasoned arguments by the chief prosecutor. No extension may be granted for a period of more than six months.[19]

48. In contrast, during his visit, the Special Rapporteur was informed that, for example, in the Maison d'Arrêt et de Correction de Ouagadougou, approximately 40 per cent of those in custody were held on remand pending trial.

49. The Special Rapporteur welcomes the efforts of the Government of Burkina Faso to implement the tenth recommendation listed in the report of the Working Group on the Universal Periodic Review of Burkina Faso (A/HRC/10/80, para. 98 (10)). The efforts have included building a new prison and reform institution and implementing the national justice policy 2010–2019, which involves improving prison management, promoting and protecting the rights of detainees, promoting the social reintegration of prisoners and humanizing places of detention (A/HRC/WG.6/16/BFA/1, paras. 56–60). The Special Rapporteur also takes note that the average time required to process cases has decreased significantly from 4 months and 15 days in 2009 to 2 months and 26 days in 2011 for civil cases (A/HRC/WG.6/16/BFA/1, para. 33). The Special Rapporteur calls upon the Government to strive for a significant decrease in the average time to process criminal cases.

50. The Special Rapporteur further welcomes the fact that, under the national justice policy, by 2019 there should be a credible, fair, independent, transparent, decentralized and competent justice system accessible to all. In that regard, the Special Rapporteur urges the Government of Burkina Faso to pursue its efforts to realize that vision, in particular to improve prison conditions and lower the average time required to process criminal cases.

---

[18] See also the summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Burkina Faso (A/HRC/WG.6/16/BFA/3), para. 15, according to which the country's 24 functioning detention and correctional facilities were allegedly overcrowded, with the highest occupation rates of ranging from 218 to 270 per cent in December 2011.

[19] See also the initial report of Burkina Faso under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/BFA/1), paras. 45–47.

C. Government action

51. During and following his visit, the Special Rapporteur noted the considerable political will and commitment to the promotion of human rights and countering terrorism.

1. Human rights

52. The Special Rapporteur welcomes the establishment on 23 February 2012 of the Ministry for Human Rights and the Promotion of Civic Responsibility by Decree No. 2012-122/PRES/PM. It had previously been merged with the Ministry of Justice (A/HRC/WG.6/16/BFA/1, para. 7). The Special Rapporteur was informed that the aim of the change was to promote responsible citizenship through a culture of values and respect for human rights.

53. The Special Rapporteur notes with appreciation the diverse activities undertaken by the Ministry for Human Rights and the Promotion of Civic Responsibility to raise awareness about human rights, including the integration of human rights into formal and non-formal education as part of the national strategy to promote a culture of tolerance and peace (see para. 8 above).

54. The Special Rapporteur further notes with appreciation the establishment of the National Human Rights Commission on 20 November 2001 (Decree No. 2001-628/PRES/MP/MJPDH) and further amendments in 2009 to bring it into line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (Act No. 062-2009/AN of 21 December 2009).[20] During his visit, the Special Rapporteur was informed that the Commission was in the process of becoming operational, with the recent appointment of Commissioners.[21] The Special Rapporteur expresses his regret at not have been able to gather information on the work of the Commission and urges it to take up its work in promoting and protecting human rights in Burkina Faso.

2. Counter-terrorism

55. The Special Rapporteur was impressed by the dedication of the Government of Burkina Faso to countering terrorism. It is the view of the Special Rapporteur that government representatives of Burkina Faso recognize the international nature of terrorism and the need to prevent and counter terrorism globally. That is reflected in the domestic and international commitment of Burkina Faso to counter terrorism.

56. The Special Rapporteur notes with appreciation that, in response to the existence of external threats on its borders, the Government has created a dedicated counter-terrorism force. The Special Rapporteur further welcomes the fact that the Government is establishing a national committee to counter terrorism to coordinate all reflections, initiatives and actions to counter terrorism, and a national centre to counter terrorism which will be responsible for counter-terrorism on the national territory at the operational level.[22] The Special Rapporteur further welcomes the previous and continuing cooperation

[20] Endorsed by General Assembly resolution 48/134. Available from http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/116/24/PDF/N9411624.pdf?OpenElement.

[21] See also A/HRC/WG.6/16/BFA/1, para. 46.

[22] The Special Rapporteur received the information at the stakeholders' coordination meeting held by the Counter-Terrorism Committee Executive Directorate within the framework of the I-Act Initiative in Ouagadougou, with the objective of helping strengthen counter-terrorism coordination and prevention mechanisms in Burkina Faso.

of the National Commission to Combat the Proliferation of Small Arms with international organizations in an effort to promote arms control.

57. Burkina Faso is one of the three first partnering Member States of the Integrated Assistance for Countering Terrorism Initiative (I-ACT Initiative) of the Counter-Terrorism Implementation Task Force (CTITF). The Initiative aims to help interested Member States, upon their request, to implement the United Nations Global Counter-Terrorism Strategy.[23] As part of the initiative, and at the request of Burkina Faso, CTITF, the United Nations Counter-Terrorism Centre and the United Nations Office on Drugs and Crime are working together to deliver relevant counter-terrorism technical assistance, including capacity-building for national criminal justice officials and relevant national training entities, such as advanced training for trainers who run workshops for magistrates and judicial police officers.

58. Burkina Faso is one of the four member countries of the Regional Judicial Platform of the Sahel countries. The Platform, created in 2010 with the support of the United Nations Office on Drugs and Crime, facilitates judicial cooperation between focal points in Burkina Faso, Mali, Mauritania and Niger, particularly in matters related to extradition and mutual legal assistance in criminal procedures related to terrorism.[24]

59. On 18 and 19 April 2013, a workshop on countering violent extremism in West Africa and the Sahel took place in Ouagadougou, under the auspices of the Global Counterterrorism Forum, co-chaired by Burkina Faso and Denmark.[25] The aim of the workshop was to improve understanding of the sources and drivers of violent extremism in the region and to discuss concrete ways of addressing the issue, which is of growing concern for the development and security of the countries in the region and beyond.

60. On 26 and 27 June 2013, the Counter-Terrorism Committee Executive Directorate held, within the framework of the I-Act Initiative, a stakeholders' coordination meeting in Ouagadougou with the objective of helping strengthen counter-terrorism coordination and prevention mechanisms in Burkina Faso.[26]

61. On 29 and 30 October 2013, the CTITF Working Group on Protecting Human Rights While Countering Terrorism held a second workshop entitled "Mapping and Developing Training Curricula from the Human Rights Training and Capacity Building Project" in Ouagadougou.[27]

62. The Special Rapporteur welcomes the Government's participation in the different initiatives and encourages it to further pursue its engagement in countering terrorism.

---

[23] More information on the I-Act Initiative is available from www.un.org/en/terrorism/ctitf/proj_iact.shtml.

[24] More information on the Platform is available from www.unodc.org/unodc/en/terrorism/news-and-events/regional-judicial-platforms.html.

[25] More information on the workshop is available from www.thegctf.org/web/guest/sahel-region-capacity-building.

[26] See www.un.org/en/terrorism/ctitf.

[27] Ibid.

IV. Conclusions and recommendations

A. Conclusions

63. The Special Rapporteur appreciates the cooperation of the Government of Burkina Faso. He welcomes the fact that Burkina Faso has repeatedly made commitments to uphold human rights in the context of counter-terrorism, including by ratifying many international instruments related to human rights and terrorism. The Special Rapporteur regards the commitments, together with the invitation extended to him, as significant steps on the way to fulfilling international human rights obligations.

64. To date, Burkina Faso has escaped the threat of terrorist attack, the spread of armed conflict across its borders, and religious intolerance, radicalization and violent extremism among its population. The Special Rapporteur concludes, however, that it remains vulnerable to all those threats due to its geographical proximity to the conflict in northern Mali, the length and insecurity of its borders with Mali and Niger, the economic instability of the country and its lack of natural resources, and the social and political tensions that have been evident in recent years, particularly among young people aged between 18 and 25 who suffer the highest levels of unemployment, as well as the fact that nearly half of the population is living beneath the poverty line. For the Special Rapporteur, it is troubling that, while the national economy is steadily growing, nearly half of the population is living on an income that falls below the World Bank poverty line.

65. The Special Rapporteur welcomes the fact that the country has thus far proved to be resiliently committed to peaceful negotiation and coexistence within a subregion that has been riven by conflicts in neighbouring States including Côte d'Ivoire, Mali and Niger. Burkina Faso has acted as chief peace negotiator for many of the major conflicts in the region. The Special Rapporteur concludes with appreciation that that is largely due to a long and deeply held tradition of religious and ethnic tolerance, dialogue and cooperation among its people. The Special Rapporteur concludes that Burkina Faso provides important lessons with regard to promoting religious and ethnic tolerance and considers the engagement of the Government of Burkina Faso as a best practice for ongoing dialogue and cooperation among its people.

66. The Special Rapporteur concludes that it would, however, be naive to assume that the country is not at risk. It is essential that a vulnerable State in such an exposed geographical location has the tools at its disposal to ensure the security of its borders, maintain the security of inward investment that is essential to its development, and address the economic, social, political and human rights concerns that can so easily become conditions conducive to the spread of terrorism, as foreseen in Pillar I of the United Nations Global Counter-Terrorism Strategy.

67. The Special Rapporteur was informed during his visit that, for a number of years, Burkina Faso has been the beneficiary of considerable overseas development aid. From 2008 to 2013, the European Union provided €700 million in development aid. The European Union budget for the period 2014–2019 is currently under review. The economic crisis in the eurozone and the austerity measures that have been introduced in many European States pose a threat to international aid budgets. However, the Special Rapporteur strongly urges the European Union and other international donors to maintain and increase levels of international support for Burkina Faso. Such support should be targeted at measures that contribute to securing stability ar social justice, protecting the country's borders, alleviating

poverty, resolving the crisis in the justice system, protecting and promoting human rights, and promoting inward investment and job and wealth creation.

68. In the view of the Special Rapporteur, Burkina Faso plays a critical role in promoting peace and dialogue within the subregion. It will almost certainly occupy an important mediating position in the forthcoming negotiations on the future of Mali, and will contribute significantly to the maintenance of any settlement that is reached. In performing that role, Burkina Faso needs the active support of the United Nations, its agencies and the Special Envoy of the Secretary-General for the Sahel.

69. The Special Rapporteur expresses his concern that any significant terrorist attack on the infrastructure or security of Burkina Faso would undermine social cohesion within the country, impair inward investment and further destabilize the region. The international community needs to ensure that the material and other resources necessary to protect that small and peaceful State from both external and internal threats are made available to it as a matter of regional priority.

B. Recommendations

70. In a spirit of cooperation, the Special Rapporteur wishes to make the following recommendations to the Government of Burkina Faso.

71. Burkina Faso should implement its national justice policy (2010–2019) in order to create a justice system that is credible, fair, independent, transparent, decentralized, competent and accessible to all. In that regard, the Special Rapporteur recommends that the Government of Burkina Faso:

(a) Undertake a comprehensive review of sentencing policy to ensure that the judiciary does not impose prison sentences that the Government is unable to administer in humane conditions;

(b) Strive to significantly decrease the average time taken to process criminal cases;

(c) Ensure, as an immediate means of easing prison overcrowding, that any person on pretrial remand for a non-violent offence is urgently considered for conditional release.

72. Burkina Faso should take all possible measures to ensure that GDP growth results in a proportional decrease in the poverty level of its population. The Special Rapporteur urges the Government not to spare any effort in that regard, as poverty and inequality are conditions conducive to terrorism.

73. Notwithstanding the fact that Act No. 60-2009/AN of 17 December 2009 punishing acts of terrorism has not been applied to date, Burkina Faso should ensure that it will not be misused, particularly in application of the offence of "criminal conspiracy" in article 2.

74. While commending the Government for its efforts to protect its borders, the Special Rapporteur recommends that Burkina Faso pursue those and related efforts further. In order to enable Burkina Faso to remain a haven of peace in the region, the Special Rapporteur also calls upon the international community to spare no effort in providing it with international assistance for border security maintenance.

75. While welcoming the assistance the Government of Burkina Faso provides to the many thousands of people who flee there from conflict in neighbouring countries,

the Special Rapporteur recommends that Burkina Faso pursue its efforts to identify and prevent security risks arising from extremist elements among refugees.

76. **While commending the Government of Burkina Faso for its sensitivity towards signs of intolerance and its vigilance against violent extremism, the Special Rapporteur recommends that Burkina Faso ensure that all the measures it takes to implement Security Council resolution 1624 (2005) comply with its obligations under international law, particularly regarding freedom of expression and freedom of association.**

77. **While commending the Government of Burkina Faso for having ratified many international conventions on counter terrorism, the Special Rapporteur further calls on the Government to ratify the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism, the 2005 Amendment to the Convention on the Physical Protection of Nuclear Material, the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, and the 2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.**